

REMARKS

These remarks are responsive to the non-final Office action dated June 1, 2005. Claims 28-30, 33-41, and 83-89 are pending in the application. Claim 83 is the only independent claim. In the Office action, the Examiner rejected all of the pending claims under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,524,790 to Kopf-Sill et al. ("Kopf-Sill"). Applicants traverse the rejection, contending that the pending claims are neither anticipated by nor obvious over Kopf-Sill. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have amended claims 29, 30, 33-35, 40, 83, 88, and 89; have canceled claim 87, without prejudice; and have added new claim 90. Applicants reserve the right to pursue any of the amended or canceled claims, in original or amended form, at a later time. Furthermore, applicants have presented arguments showing that claims 28-30, 33-41, 83-86, and 88-90 are neither taught nor suggested by any of the references of record. Accordingly, applicants respectfully request reconsideration of the rejected claims, and prompt issuance of a Notice of Allowability covering all of the pending claims.

I. Claim Objections

The Examiner objected to claim 34 because of an apparent informality. In particular, the Examiner indicated that --the kit-- should be inserted in line 2 of the claim, before the comma. Applicants believe that the Examiner meant after (rather than before) the comma and have amended the claim accordingly. Applicants believe that the claim was clear as originally presented but have made this amendment in the

interest of expediting prosecution and in the belief that it does not affect the scope of the claim.

II. Claim Rejections – 35 USC § 102

The Examiner rejected all of the pending claims under 35 U.S.C. § 102(e) as being anticipated by Kopf-Sill. Applicants traverse the rejections. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have amended independent claim 83. Applicants do not believe that Kopf-Sill or any other reference of record teaches or suggests every element of amended claim 83, at least for the reasons set forth below.

Claim 83 is the only independent claim pending in the application, as noted above, and is directed to a kit:

83. (Currently Amended) A kit for detecting activity in a sample, the kit comprising:
an enzyme;
a luminescent probe bound to a substrate for the enzyme; and
a particulate mass label distinct from the enzyme and capable of specifically binding to the substrate or a product of the substrate produced by action of the enzyme on the substrate, but not both;
wherein a luminescence property of the probe is sensitive to binding of the mass label to the substrate or product.

Claim 83 is patentable over Kopf-Sill because Kopf-Sill does not teach or suggest every element of claim 83. For example, Kopf-Sill does not teach or suggest a kit including an enzyme, a luminescent probe bound to a substrate for the enzyme, and a particulate mass label “distinct from the enzyme and capable of specifically binding to the substrate or a product of the substrate.”

Kopf-Sill does not teach or suggest the recited combination of an enzyme, a substrate, and a particulate mass label. Kopf-Sill relates to methods of correcting for electrokinetic effects by measuring the velocity of reactants and products in a reaction. The reaction (assay) is disclosed to include first and second reactants (or components) that are contacted, typically to form a product. The assays may involve reactants that interact via an enzyme-substrate interaction or a receptor-ligand interaction, among others (col. 30, lines 31-36), to form a product. However, Kopf-Sill does not disclose assays based on both an enzyme-substrate interaction and a distinct receptor-ligand interaction. Accordingly, Kopf-Sill does not teach or suggest a kit comprising an enzyme, a substrate, and a particulate mass label distinct from the enzyme and capable of specifically binding to the substrate or a product of the substrate, but not both, as recited by claim 83.

Kopf-Sill also does not teach or suggest a kit including a luminescent probe and a particulate mass label. The reference suggests only particular combinations of labels. For example, the reference suggests first and second fluorescent labels that interact, when in proximity, via fluorescence energy transfer (col. 28, lines 38-44). Kopf-Sill also mentions first and second colorimetric labels that interact to produce a third color (col. 28, lines 52-55). However, Kopf-Sill discloses particulate labels as being colorimetric labels only (col. 28, lines 1-6). Kopf-Sill thus does not teach or suggest any interaction between a luminescent label and a particulate label or any reaction components including this combination of labels. Therefore, Kopf-Sill does not teach or suggest a kit including a luminescent probe and a particulate mass label, as recited by claim 83.

In summary, for at least the reasons presented above, Kopf-Sill does not teach or suggest every element of claim 83. Claim 83 thus should be allowed. Claims 28-30, 33-41, 84-86, and 88-90, which depend from claim 83, also should be allowed for at least the same reasons as claim 83.

III. The Mirkin Reference

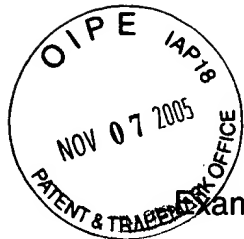
In the Office action, the Examiner also indicated that U.S. Patent No. 6,361,944 to Mirkin et al. ("Mirkin") "appears to disclose the claimed invention." Applicants traverse this suggestion. However, applicants believe this point is rendered moot by the amendment to claim 83. For example, claim 83 recites a kit comprising, in part, an enzyme, a luminescent probe, and a particulate mass label. Mirkin does not teach or suggest an enzyme in a kit with either a luminescent probe or a particulate mass label. Therefore, for at least these reasons claim 83 is patentable over Mirkin.

IV. Other Claim Amendments

The present communication amends claims 29, 30, 33-35, 40, 88, and 89, and cancels claim 87, in addition to the amendment to claim 83 presented above. These amendments to the claims generally address formal issues created by the amendment to claim 83.

V. Conclusion

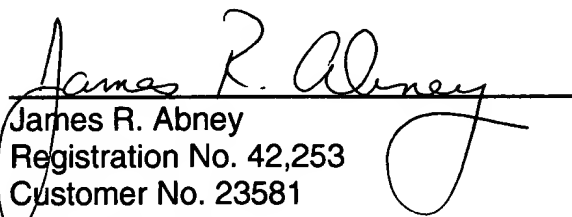
Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowance covering the pending claims. If the



If Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

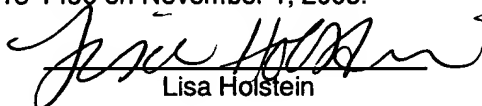
Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on November 1, 2005.


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